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No. 558

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IN THE

Supreme Court Of The United States

October Term, 1964

AAXICO AIRLINES, INC., PETITIONER

V.

AIR LINE PILOTS ASSOCIATION INTERNATIONAL, ET AL

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

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CLEMENS PRINTING CO., SAN ANTONIO, TEXAS

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Dismissal of the Petition for Certiorari in Brotherhood of Railway Clerks vs. United Airlines, Inc., No. 31, October Term, 1964, prompts a brief supplement to the petition in this cause.

The decision in the case at bar by the Court of Appeals is, we believe, in conflict with the decision of this Court in General Committee vs. M.K.T. R. Co., 320 U.S.323, 88 L.Ed. 76 (1943), and the decisions of the Courts of Appeals which have followed that decision: Brotherhood of Railway Clerks vs. United Airlines, 325 F.2d 576; Division No. 14 vs. Leighty, 298

F.2d 17 (1962, cert.den. 369 U.S. 885); and Ruby vs. American Airlines, 323 F.2d 576 (2nd Cir., 1963, cert. den. 11 L.Ed.2d 611).

This position is based on two further propositions: first, that the shift of the bargaining unit in this case from AAXICO to CAPITOL, when the pilots followed the work, raised substantial questions as to whether the representative and contract status of the union and pilots to AAXICO survived; and second, that the Court of Appeals in this case, contrary to General Committee, supra, took jurisdiction of this issue as a judicial question.

As to the first of these propositions, there can be little doubt that Capitol Airways, Inc., succeeded to the business AAXICO had theretofore performed, and took over aircraft, flight schedules, pilots and collective agreement. (R. p. 449-50) Under settled doctrine Capitol was clearly obligated to and did accept ALPA as bargaining agent for the AAXICO pilot group. N.L.R.B. vs. McFarland, 306 F.2d 219 (10th Cir. 1962). Whether Capitol was bound by the AAXICO agreement as a "successor" under strict contract law is not significant in view of the holding of this Court in Wiley & Sons vs. Livingston, 11 L.Ed.2d 898, that under circumstances present here some contractually created obligations survive a change of employers without regard to traditional contract concepts, and the further fact that Capitol did expressly assume that contract.

The novel and significant question presented by this case is whether the succession of Capitol to these representative and contractual relationships theretofore held by AAXICO relieves AAXICO of further obligations under them. We submit that the very policies seeking stability in labor relations and industrial peace that require the assumption of these obligations by a new employer require that the old employer be relieved of them.

The second proposition stems from the holding of the Court of Appeals as follows:

> ". . . To the extent that the trial court could find on the record before it that the appellant had failed to make available the grievance machinery in order to permit a reference to a System Board of Adjustment, **and to the extent that the court could find that ALPA had not either acquiesced in or abandoned any rights which it may have had under the contract, if not terminated, it would be within the competence of the trial court** to have required Aaxico to assure the availability of grievance procedures and a System Board of Adjustment." (Petition for Writ of Certiorari. No. 558. Appendix A, p. 9a) (emphasis added)

Under the opinion, the trial court may find as a fact that ALPA and the pilots, by reason of their following the work to Capitol, either acquiesced in the termination of the relationship by AAXICO or abandoned their representative and contract rights. The limping of the representation issue into these familiar

terms of "abandonment" and "acquiescence" cannot disguise the authority granted to the trial court to decide whether ALPA continues to have representation rights against AAXICO. The exercise of this authority is precisely what this Court withholds in General Committee vs. M.K.T., supra, followed in Railway Clerks vs. United Airlines, supra, and Ruby vs. American Airlines, Inc., supra.

How shall these issues be resolved: by the courts, the National Mediation Board or the system boards?

The Sixth Circuit in Brotherhood of Railway Clerks vs. United Airlines, supra, would send them to the National Mediation Board for adjudication under Sec. 2 Ninth of the Act. The Board rejects this view, and considers the jurisdiction given it under this section to include only disputes as to who shall represent a class of employees.

In its **Memorandum for the United States as Amicus Curaie,** pp. 11, 15, filed in the Railway Clerks Case in this Court, the government suggests that such disputes involve application of collective agreements and are thus within the jurisdiction of system boards of adjustment. The decision of the Fifth Circuit in the case at bar is erroneously cited in support of this view. We submit that the system board, created by contract, is not an appropriate body to determine rights of a body of employees not a party to the contract, nor is the system board an appropriate body to resolve disputes which question the validity and con-

tinued existence of the very contract which created and regulates it.

If the Board's position that disputes of the type here involved are not within Section 2 Ninth is accepted, the Act nevertheless provides means of resolving such disputes. Under Section 2 Sixth, either party to such a dispute may demand and must be accommodated to a prompt meeting, followed if necessary, by all the mediatory and arbitration processes afforded by the Act. It is these processes which ALPA and its members wholly failed to exercise in this case, thereby frustrating the scheme of the Act.

We respectfully submit that this Court should grant the writ applied for and that it should clearly delineate judicial and administrative jurisdiction of representation disputes.

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I hereby certify that a true and correct copy of the foregoing "Supplemental Brief in Support of Petition for Certiorari" has been served on the following attorneys by United States Mail, postage prepaid, this ..... day of November, A.D. 1964.:

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